



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

W. James JACKSON *et al.*

Appl. No.: 10/766,711

Filed: January 27, 2004

For: **Chlamydia Protein, Gene Sequence
and Uses Thereof**

Confirmation No.: 4900

Art Unit: 1645

Examiner: BASKAR, Padmavathi

Atty. Docket: 2479.0040003/EJH/C-K

Reply to Requirement for Election of Species

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated **February 23, 2007**, the Examiner requested an election of a single species for prosecution among:

(a) sequences at least 95% identical to amino acids 29-253 [*sic:533*] of SEQ ID NO: 2;

(b) sequences at least 95% identical to amino acids 217-674 of SEQ ID NO: 2;

(c) sequences at least 95% identical to amino acids 688-1012 of SEQ ID NO: 2;

(d) sequences at least 95% identical to amino acids 29-1012 of SEQ ID NO: 2;

and

(e) polypeptides encoded by DNA sequences [which hybridize to a nucleotide sequence] complementary to the nucleotide sequence encoding SEQ ID NO: 2.

Applicants hereby provisionally elect sequences at least 95% identical to amino acids 217 - 674 of SEQ ID NO: 2. Applicants submit that claims 2, 16, 21, 22, 38-59

and 71-82 are readable on this election. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. Upon the identification of otherwise allowable subject matter in a generic or linking claim, Applicants also request that the Examiner examine any remaining unelected species, according to 37 C.F.R. § 1.141(a).

This provisional election is made with traverse.

Applicants respectfully point out that it is improper to withdraw claim 2 from consideration because claim 2 is a linking claim to the elected species, *i.e.*, SEQ ID NO: 2. SEQ ID NOs: 3, 17, or 25-37 in claim 2 are fragments of SEQ ID NO: 2. In addition, it is respectfully submitted that the claim status in the second page of the Office Action is incorrect. The pending claims are claims 2, 13, 16, 21, 22, and 27-82.

Furthermore, Applicants respectfully request a clarification as to the amino acid sequence for which Applicant is required to elect species. In particular, with respect to Group (a), Applicants believe that the Examiner refers to amino acid 29-533 of SEQ ID NO: 2, not 29-253 of SEQ ID NO: 2. Applicants also request a clarification of Group (e) that the species is polypeptides encoded by DNA sequences which hybridize to a nucleotide sequence complementary to the nucleotide sequence encoding SEQ ID NO: 2, not polypeptides encoded by DNA sequences that are complementary to the nucleotide sequence encoding SEQ ID NO: 2.

It is respectfully submitted that these requirements for election of species are unnecessary. Searching all the species of the present invention together does not present a “serious burden” on the Examiner. MPEP § 803 (“If the search and examination of an Atty. Dkt. No. 2479.0040003/EJH/C-K

entire application can be made without serious burden, the examiner **must** examine it on the merits, even though it includes claims to independent or distinct inventions.” (emphasis added)).

Searching the species of the present invention together does not create a “serious burden.” The species are all fragments of SEQ ID NO: 2 (*C. trachomatis* PmpG) and thus a search for SEQ ID NO: 2 will reveal any fragments thereof.

The Examiner further required numerous species elections. Applicants' provisional elections are listed below, along with a listing of each of the claims believed to read on each of the provisionally-elected species.

These elections are made **with traverse**.

Subgroup A. The Examiner has required an election of species among heterologous polypeptides. Applicants hereby provisionally elect an affinity purification peptide. All claims are generic to the provisionally elected species.

Subgroup B. The Examiner has required an election of species among adjuvants. Applicants hereby provisionally elect mLT. All claims are generic to the provisionally elected species.

Subgroup C. The Examiner has required an election of species among targeting molecules. Applicants hereby provisionally elect monoclonal antibodies. All claims are generic to the provisionally elected species.

Subgroup D. The Examiner has required an election of species among formulation methods. Applicants hereby provisionally elect a liposome preparation. All claims are generic to the provisionally elected species.

Subgroup E. The Examiner has required an election of species between a humoral immune response and a cell-mediated immune response. Applicants hereby provisionally elect a cell-mediated immune response. All claims are generic to the provisionally elected species.

Subgroup F. The Examiner has required an election of species between mammal or bird. Applicants hereby provisionally elect mammal. All claims are generic to the provisionally elected species.

At page 3 of the Office Action, the Examiner states that the claims are directed to patentably distinct species. However, even where patentably distinct inventions appear in a single application, restriction remains improper unless the Examiner can show that the search and examination of the groups would entail a "serious burden." See MPEP § 803. In the present situation, the Examiner has failed to make such a showing. For example, although the Examiner has asserted that various heterologous polypeptides in addition to the polypeptide comprising SEQ ID NO: 2 or fragments thereof are distinct species, Applicants submit that a search related to the polypeptide would provide information regarding polypeptides comprising various heterologous polypeptides, such as a pre or pro sequence, an affinity purification peptide, a heterologous immunogenic peptide, and a combination of two or more of said heterologous polypeptides. Thus, the search and examination of all species would not entail a serious burden. Applicants

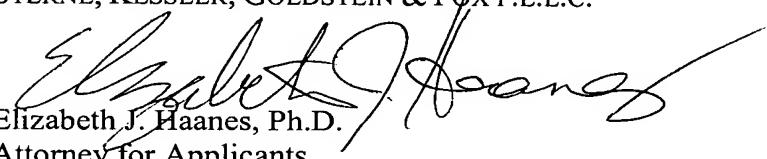
assert the right to have additional species examined in the event that a generic claim is found to be allowable in accordance with 37 C.F.R. § 1.141(a).

Accordingly, reconsideration and withdrawal of the Requirement for Election of Species, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

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